



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 4] नई दिल्ली, मंगलवार, फरवरी 25, 1986/ फाल्गुन 6, 1907
No. 4] NEW DELHI, TUESDAY, FEBRUARY 25, 1986/ Phalgun 6, 1907

इस भाग में मिल पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 25th February, 1986:—

BILL NO. 10 OF 1986

A Bill to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows:—

1. (1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986. Short title and extent.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “divorced woman” means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) “iddat period” means, in the case of a divorced woman,—

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) "Magistrate" means a Magistrate of the First class exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the divorced woman resides. 2 of 1974.

Mahr or other properties of Muslim woman to be given to her at the time of divorce.

3. (1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(a) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of *mahr* or dower has not been paid or that properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance

2 of 1974.

or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. (1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportion in which they would inherit her property and at such periods as he may specify in his order:

Order for
payment
of main-
tenance.

Provided that if any such relative is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

29 of 1954.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the proviso to sub-section (1), the Magistrate may, by order direct the State Wakf Board established under section 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to
make
rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

STATEMENT OF OBJECTS AND REASONS

The Supreme Court, in *Mohd. Ahmed Khan vs. Shah Bano Begum and others* (A.I.R. 1985 S.C. 945), has held that although the Muslim law limits the husband's liability to provide for maintenance of the divorced wife to the period of *iddat*, it does not contemplate or countenance the situation envisaged by section 125 of the Code of Criminal Procedure, 1973. The Court held that it would be incorrect and unjust to extend the above principle of Muslim law to cases in which the divorced wife is unable to maintain herself. The Court, therefore, came to the conclusion that if the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of *iddat*, but if she is unable to maintain herself after the period of *iddat*, she is entitled to have recourse to section 125 of the Code of Criminal Procedure.

2. This decision has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests. The Bill accordingly provides for the following among other things, namely:—

(a) a Muslim divorced woman shall be entitled to a reasonable and fair provision and maintenance within the period of *iddat* by her former husband and in case she maintains the children born to her before or after her divorce, such reasonable provision and maintenance would be extended to a period of two years from the dates of birth of the children. She will also be entitled to *mahr* or dower and all the properties given to her by her relatives, friends, husband and the husband's relatives. If the above benefits are not given to her at the time of divorce, she is entitled to apply to the Magistrate for an order directing her former husband to provide for such maintenance, the payment of *mahr* or dower or the delivery of the properties;

(b) where a Muslim divorced woman is unable to maintain herself after the period of *iddat*, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the Magistrate would direct the other relatives who have sufficient means to pay the shares of these relatives also. But where a divorced woman has no relatives or such relatives or any one of them has not enough means to pay the maintenance or the other relatives who have been asked to pay the shares of the defaulting relatives also do not have the means to pay the shares of the defaulting relatives the Magistrate would order the State Wakf Board to pay the maintenance ordered by him or the shares of the relatives who are unable to pay.

3. The Bill seeks to achieve the above objects.

NEW DELHI;

A. K. SEN.

The 19th February, 1986.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. Such power would enable the Central Government to make rules with regard to matters of procedure and administrative detail, which is not practicable to provide for in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 8 OF 1986

A Bill to provide for the constitution of a Tribunal for the verification of the quantum of usage of water claimed by the farmers of Punjab, Haryana and Rajasthan from the Ravi-Beas system as on the 1st day of July, 1985, and the waters used for consumptive purposes and for the adjudication of the claim of Punjab and Haryana regarding the shares in their remaining waters.

WHEREAS paragraph 9.1 of the Punjab Settlement provides that the farmers of the States of Punjab, Haryana and Rajasthan will continue to get water not less than what they were using from the Ravi-Beas system as on the 1st day of July, 1985, and that waters used for consumptive purposes will also remain unaffected and the quantum of usage so claimed shall be verified by a Tribunal referred to in paragraph 9.2 of the said Settlement;

AND WHEREAS paragraph 9.2 of the said Punjab Settlement also provides that the claim of the States of Punjab and Haryana regarding the shares in their remaining waters will be referred for adjudication to a Tribunal to be presided over by a Supreme Court Judge;

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Short
title,
extent
and
commence-
ment.

1. (1) This Act may be called the Ravi and Beas Waters Tribunal Act, 1986.

(2) It extends to the States of Punjab, Haryana and Rajasthan.

(3) It shall be deemed to have come into force on the 24th day of January, 1986.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Punjab Settlement" means the Memorandum of Settlement on the Punjab problem signed at New Delhi on the 24th day of July, 1985;

(b) "Tribunal" means the Ravi and Beas Waters Tribunal constituted under section 3.

3. (1) As soon as may be after the commencement of this Act, the Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the Ravi and Beas Waters Tribunal for the verification and adjudication of the matters referred to in paragraph 9 of the Punjab Settlement.

Constitution of Tribunal.

(2) The Tribunal shall be a single member Tribunal presided over by a person nominated by the Chief Justice of India from amongst persons who at the time of such nomination are Judges of the Supreme Court.

(3) The Tribunal may appoint two or more persons as assessors to advise it in any proceeding before it.

(4) The presiding officer of the Tribunal and the assessors appointed under sub-section (3) shall receive such remuneration, allowances or fees as may be specified by the Central Government.

4. (1) When a Tribunal has been constituted under section 3, the Central Government shall refer the matters specified in paragraph 9 of the Punjab Settlement to the Tribunal for verification and adjudication.

Adjudication of matters.

(2) The Tribunal shall investigate the matters referred to it and forward to the Central Government a report, within such period as may be specified in the reference under sub-section (1), setting out the facts as found by it and giving its decision on the matters referred to it.

(3) The Central Government shall publish the decision of the Tribunal in the Official Gazette, and such decision shall be final and binding on the parties to the proceeding before it and shall be given effect to by them.

5. If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, such vacancy shall be filled in accordance with the provisions of sub-section (2) of section 3 and the investigation of the matters referred to the Tribunal may be continued by the Tribunal after the vacancy is filled from the stage at which the vacancy occurred.

Filling up of vacancies.

5 of 1908. 6. (1) The Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Powers of the Tribunal.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents and material objects;

(c) issuing commissions for the examination of witnesses or for local investigation.

(2) The Tribunal may require any State Government to carry out or permit to be carried out, such surveys and investigations as may be considered necessary for the verifications or adjudication of any matter referred to it.

(3) Subject to the provisions of this Act, the Tribunal may, by order, regulate its own practice and procedure.

Bar of
juris-
diction of
courts.

7. Notwithstanding anything contained in any other law, no court shall have, or exercise, jurisdiction in respect of the matters which may be referred to the Tribunal under this Act.

Dissolu-
tion of
the
Tribunal.

8. The Central Government shall dissolve the Tribunal after it has forwarded its decision to the Central Government.

Act to
have
over-
riding
effect.

9. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Repeal
and
saving.

10. (1) The Ravi and Beas Waters Tribunal Ordinance, 1986, is hereby repealed. 2 of 1986.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS .

Paragraph 9 of the Punjab Memorandum of Settlement signed at New Delhi on the 24th July, 1985 provides as follows:—

“9.1 The farmers of Punjab, Haryana and Rajasthan will continue to get water not less than what they are using from the Ravi-Beas system as on 1-7-1985. Waters used for consumptive purposes will also remain unaffected. Quantum of usage claimed shall be verified by the Tribunal referred to in para 9.2 below;

9.2 The claim of Punjab and Haryana regarding the shares in their remaining waters will be referred for adjudication to a Tribunal to be presided over by a Supreme Court Judge. The decision of this Tribunal will be rendered within six months and would be binding on both parties. All legal and constitutional steps required in this respect be taken expeditiously.”

2. The Tribunal contemplated under paragraph 9 of the Punjab Settlement could not be set up earlier due to certain unavoidable administrative reasons. As the intention was to give effect to all the terms of the Punjab Settlement from the 26th January, 1986, the Ravi and Beas Waters Tribunal Ordinance, 1986 (2 of 1986) was promulgated by the President on the 24th January, 1986 so as to enable the constitution of the Ravi and Beas Waters Tribunal to give effect to the provisions of paragraph 9 of the Punjab Settlement. The Tribunal under the provisions of the Ordinance has also been set up on the 25th January, 1986.

3. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;

The 15th February, 1986.

B. SHANKARANAND.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of a Tribunal to be known as the Ravi and Beas Waters Tribunal consisting of a single member for the verification and adjudication of the matters referred to in paragraph 9 of the Punjab Settlement. Sub-clause (3) of that clause also provides that the said Tribunal may appoint two or more persons as assessors to advise it in any proceeding before it. Sub-clause (4) of that clause further provides that the presiding officer of the Tribunal and the assessors appointed under sub-clause (3) shall receive such remuneration, allowances or fees as may be specified by the Central Government.

2. Sub-clause (2) of clause 6 enables the said Tribunal to carry out such surveys and investigation as may be considered necessary by it for the verification or adjudication of the matters referred to it.

3. In addition to the presiding officer of the Tribunal and the assessors, certain posts will be required for a period of six months to assist the Tribunal in its functioning.

4. The total expenditure involved in the functioning of the said Tribunal for six months has been assessed at Rs. 25.25 lakhs. The said expenditure will be charged to "Non-Plan" head and will be accounted for under Major head 296 of the Ministry of Water Resources. The said expenditure will be met through a Supplementary Grant to be obtained for the said Ministry.

5. The Bill will not involve any other recurring or non-recurring expenditure.

SUBHASH C. KASHYAP,
Secretary-General.